



UNITED STATES GOVERNMENT
NATIONAL LABOR RELATIONS BOARD

REGION 9
550 MAIN ST
RM 3003
CINCINNATI, OH 45202-3271

Agency Website: www.nlrb.gov
Telephone: (513)684-3686
Fax: (513)684-3946

April 20, 2020

(b) (6), (b) (7)(C)

Re: FUYAO
Case 09-CA-247030

Dear (b) (6), (b) (7)(C):

We have carefully investigated and considered your charge that Fuyao has violated the National Labor Relations Act.

Decision to Dismiss: Based on that investigation, I have decided to dismiss your charge for the reasons discussed below.

Your charge alleges that, within the previous 6 months, the Employer interfered with, restrained and coerced employees in the exercise of rights protected by Section 8(a)(1) of the Act by threatening to retaliate against employees if they joined or supported a union. More specifically, you allege that, in the documentary film *American Factory*, agents of the Employer threatened employees because of their union activities. The charge was filed on August 22, 2019. The investigation disclosed that the alleged unlawful statements were made while the documentary was being filmed in 2017 by independent filmmakers and that they were made outside the presence of employees. The investigation further disclosed that the statements were disseminated 2 years later when the producers of *American Factory* debuted the film at the Sundance Film Festival on January 25, 2019, and that at least one former employee of the Employer was present at the festival. Section 10(b) of the Act provides that no complaint shall issue based upon any unfair labor practice occurring more than 6 months prior to the filing of the charge with the Board. The Section 10(b) period commences when a party has clear and unequivocal notice of a violation or, in the exercise of reasonable diligence, should have become aware that the Act had been violated. See, e.g., *Carrier Corp*, 319 NLRB 184 (1995); *Mine Workers District 17*, 315 NLRB 1052 (1994); *Moeller Bros. Body Shop*, 306 NLRB 191, 192-93 (1992). Your charge is untimely because it was filed more than 2 years after the alleged unlawful statements were made and over 6 months after employees were put on notice of those statements at the Sundance Film Festival. The statements were initially made well outside the 10(b) period and, in the absence of any employees overhearing and being chilled by such statements, were not unlawful at the time of utterance. Thereafter, employees were put on notice of the Employer's statements on January 24, 2019 by virtue of former employees' presence at Sundance, which also occurred outside of the 10(b) period.

Even if proceeding to complaint here was not barred by Section 10(b), in these circumstances, doing so 3 years after the alleged unlawful statements were made would not effectuate the purposes and policies of the Act. Since the statements were made, the Employer

has settled and remedied other unfair labor practice charges, involving conduct that also occurred during the documentary filming, in part by posting notices assuring employees of their Section 7 rights. Even if employees had been present and coerced by the statements at the time they were made, to litigate the statements' alleged illegality now, 3 years later, would result in a largely duplicative remedy.

Charging Party's Right to Appeal: The Charging Party may appeal my decision to the General Counsel of the National Labor Relations Board, through the Office of Appeals.

Means of Filing: You must file your appeal electronically or provide a written statement explaining why electronic submission is not possible or feasible (Written instruction for the NLRB's E-Filing system and the Terms and Conditions of the NLRB's E-Filing policy are available at www.nlrb.gov. See [User Guide](#). A video demonstration which provides [step-by-step instructions](#) and frequently asked question are also available at www.nlrb.gov. If you require additional assistance with E-Filing, please contact E-Filing@NLRB.gov.

You are encouraged to also submit a complete statement of the facts and reasons why you believe my decision was incorrect. If you cannot file electronically, please send the appeal and your written explanation of why you cannot file electronically to the **General Counsel at the National Labor Relations Board, Attn: Office of Appeals, 1015 Half Street SE, Washington, DC 20570-0001**. Unless filed electronically, a copy of the appeal should also be sent to me.

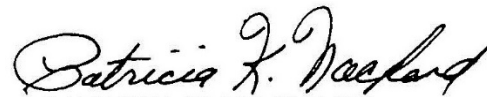
The appeal MAY NOT be filed by fax or email. The Office of Appeals will not process faxed or emailed appeals.

Appeal Due Date: The appeal is due on **May 4, 2020**. If the appeal is filed electronically, the transmission of the entire document through the Agency's website must be completed **no later than 11:59 p.m. Eastern Time** on the due date. If filing by mail or by delivery service an appeal will be found to be timely filed if it is postmarked or given to a delivery service no later than May 3, 2020. **If an appeal is postmarked or given to a delivery service on the due date, it will be rejected as untimely.** If hand delivered, an appeal must be received by the General Counsel in Washington D.C. by 5:00 p.m. Eastern Time on the appeal due date. If an appeal is not submitted in accordance with this paragraph, it will be rejected.

Extension of Time to File Appeal: The General Counsel may allow additional time to file the appeal if the Charging Party provides a good reason for doing so and the request for an extension of time is **received on or before May 4, 2020**. The request may be filed electronically through the **E-File Documents** link on our website www.nlrb.gov, by fax to (202)273-4283, by mail, or by delivery service. The General Counsel will not consider any request for an extension of time to file an appeal received after May 4, 2020, **even if it is postmarked or given to the delivery service before the due date**. Unless filed electronically, a copy of the extension of time should also be sent to me.

Confidentiality: We will not honor any claim of confidentiality or privilege or any limitations on our use of appeal statements or supporting evidence beyond those prescribed by the Federal Records Act and the Freedom of Information Act (FOIA). Thus, we may disclose an appeal statement to a party upon request during the processing of the appeal. If the appeal is successful, any statement or material submitted with the appeal may be introduced as evidence at a hearing before an administrative law judge. Because the Federal Records Act requires us to keep copies of case handling documents for some years after a case closes, we may be required by the FOIA to disclose those documents absent an applicable exemption such as those that protect confidential sources, commercial/financial information, or personal privacy interests.

Very truly yours,

A handwritten signature in black ink, reading "Patricia K. Nachand". The signature is fluid and cursive, with the first name "Patricia" and last name "Nachand" clearly legible.

Patricia K. Nachand
Acting Regional Director

Enclosure

cc: Michael T. Short, Attorney
Littler Mendelson, PC
21 E State St, 16th Floor, Suite 1600
Columbus, OH 43215-4238

Jonathan L. Segal
Davis Wright Tremaine LLP 865 S.
Figueroa Street, Suite 2400
Los Angeles, CA 90017

Fuyao
800 Fuyao Avenue
Moraine, OH 45439-7500

UNITED STATES OF AMERICA
NATIONAL LABOR RELATIONS BOARD

APPEAL FORM

To: General Counsel
Attn: Office of Appeals
National Labor Relations Board
1015 Half Street SE
Washington, DC 20570-0001

Date:

Please be advised that an appeal is hereby taken to the General Counsel of the National Labor Relations Board from the action of the Regional Director in refusing to issue a complaint on the charge in

Case Name(s).

Case No(s). *(If more than one case number, include all case numbers in which appeal is taken.)*

(Signature)